

ORAL ARGUMENT NOT YET SCHEDULED**U.S. COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF
THE UNITED STATES, *et al.*,

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 24-1193
(Consolidated with Nos. 24-1261,
24-1266, 24-1271, and 24-1272)

Joint Proposed Briefing Schedule and Format

Pursuant to the Court's order of August 22, 2024, ECF 2071335, the parties jointly propose a schedule and format for briefing these consolidated cases, which concern EPA's Final Rule titled "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances," 89 Fed. Reg. 39,124 (May 8, 2024). Petitioners are seven industry organizations. Respondents are EPA and Michael S. Regan, EPA's Administrator. And Respondent-Intervenors are five community and environmental organizations. Together, these parties request that the Court enter the following briefing schedule and format:

| Filing | Due date | Word limit |
|-------------------------------|-------------------|-------------------|
| Petitioners' opening brief | November 4, 2024 | 17,000 Words |
| Respondents' answering brief | January 17, 2025 | 17,000 Words |
| Respondent-Intervenors' brief | February 17, 2025 | 11,050 Words |
| Petitioners' reply brief | March 19, 2025 | 8,500 Words |
| Joint appendix | March 26, 2025 | |
| Final form briefs | April 2, 2025 | |

Petitioners' rationale for proposed format and schedule

The proposed deadlines for Petitioners' briefs are consistent with briefing schedules in similar rule challenges. They also reflect the complexity of the subject matter, the number of arguments Petitioners intend to make, and the need to coordinate among seven Petitioners.

Petitioners' proposed word limits are also appropriate. The seven Petitioners intend to challenge the Final Rule on multiple independent grounds. In addition, their brief must cover the effects of the Final Rule on a wide variety of industries. Petitioners' members include entities that (for example) have produced or may have produced PFOA or PFOS in the past, have used or may have used PFOA or PFOS or products containing PFOA or PFOS in the past, have received or may have received waste material containing PFOA or PFOS from third parties, may find detectable PFOA and PFOS in their intake water, may collect, transport, process,

produce, or market secondary materials that are beneficially reused and may contain detectable levels of PFOA or PFOS, and may be the current or former owner of property with detectable levels of PFOA or PFOS. These entities are affected by the Final Rule in disparate ways.

A joint opening brief with 17,000 words will allow Petitioners to adequately present their multiple grounds for challenge, including by addressing the industry-specific and site-specific impacts of the Final Rule. A reply brief of half this length (8,500 words) is consistent with the proportion set forth in the Federal Rule 32(a)(7)(B)(ii).

Respondents' rationale for proposed format and schedule

The proposed schedule for Respondents' answering brief is generally consistent with briefing schedules established in similar challenges addressing EPA actions in this Court and reflects time needed for Respondents to obtain the necessary management approvals at the U.S. Department of Justice and EPA, federal holidays, and counsel's other work commitments. Respondents seek a word count equivalent to the requested word count of Petitioners' opening brief—here, 17,000 words

total—which ensures equity between the parties and will allow Respondents to fully address the arguments raised by the challengers.

Respondent-Intervenors’ rationale for proposed format and schedule

Under this Circuit’s rules, intervenors are generally allotted 70 percent the word limit that petitioners and respondents are entitled to. *See* D.C. Cir. R. 32(e)(2)(B)(i) (9,100 words for intervenor brief); Fed. R. App. P. 32(a)(7)(B)(i) (13,000 words for principal briefs). Accordingly, when this Court extends the length of petitioners’ briefs, it routinely extends the length of intervenors’ briefs as well. *See, e.g., Western States Trucking Assn. v. EPA, D.C. Cir. No. 23-1143, ECF# 2017811* (Sept. 19, 2023) (Respondent-Intervenor briefs of 13,200 words total); *Texas v. EPA*, D.C. Cir. No. 22-1031, ECF# 1965622 (Sept. 22, 2022) (14,700 words total), *State of Ohio v. EPA*, D.C. Cir. No. 22-1081, ECF# 1965631 (Sept. 20, 2022) (14,700 words total). Intervenors’ requested 11,050 word limit is less than 70 percent of the 17,000 word limit requested by Petitioners, and it would provide sufficient space to address the broad legal and technical challenges that Petitioners are expected to raise. Intervenors’ requested briefing deadline of February 17, 2025, one month after Respondents’ answering brief, would provide time for Intervenors to review Respondents’ brief and, consistent with this Circuit’s rules, to “avoid repetition of facts or legal arguments made” by Respondents. D.C. Cir. R. 28(d)(2).

Dated: September 9, 2024

Respectfully Submitted,

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Certificates of Compliance and Service

I certify that this filing complies with Fed. R. App. P. 27(d)(1)(E) because it uses 14-point Times New Roman, a proportionally spaced font.

I also certify that this filing complies with Fed. R. App. P. 27(d)(2), because by Microsoft Word's count, it has 686 words, excluding the parts exempted under Fed. R. App. P. 32(f).

And I certify that on September 9, 2024, I filed the foregoing with the Court's CMS/ECF system, which will notify each party.

Dated: September 9, 2024

Respectfully submitted,

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